Held, (1) that where there is evidence that the possession or importation or exportation was for self-consumption and the amount of chandu concerned bore this out, the Court should in assessing punishment bear in mind the provisions of Section 4 (5) of the Proclamation where the consumption of chandu is made an offence punishable by imprisonment for as long a term as is likely to cure the addict;

(2) that in this case, the District Judge had assessed a reasonable period for the cure of the addiction and that the appeal should be dismissed.

Accused in person.

R. D. Lloyd for the Public Prosecutor.

Laville, J. :—In this case accused appeals against a sentence of six months for importing chandu on 5.6.46. He admitted the offence, and in his grounds of appeal states he is an addict and that the chandu was for his own consumption.

His grounds of appeal are: (i) that he imported only a small quantity for his own use; and (ii) that he has a wife and two small children. The latter ground is irrelevant; it is a normal condition of man to have a wife and children and such a state cannot provide an excuse or mitigation for an offence of this kind. If accused had had any consideration for them he would have refrained from this offence. As to the former ground the amount of chandu imported is in my opinion only relevant in cases where the import can be taken to be for trade purposes.

The evils aimed at by the proclamation are twofold; the importation of chandu for trade and for self-consumption, and the provisions of section 7 seem to have both these objects in mind. The first is to be attacked by imprisonment and fine since imprisonment alone might be welcomed provided the profit remained for enjoyment after the offence had been purged. The second is to be attacked, as we see in section 4 sub-section 5 where consumption is made an offence, by imprisonment alone for as long a term as is likely to cure the addiction. This is taken to be a maximum period of one year.

In assessing the punishment, therefore, under section 7 for importing or exporting or possessing with that in view, if there is evidence that the possession or importation or exportation is for self-consumption and the amount of chandu concerned bears this out, the Court should, I consider, bear in mind the provisions of section 4 sub-section 5.

In order to aid the Court in this, the prosecution should have available expert medical opinion as to how long an abstention from the drug is necessary to cure an addict or enable him to overcome his craving. Such an opinion could merely state the minimum or maximum average times, and it would be for the Court to decide as best it could how much of this period would be needed in each individual case.

In considering the question of punishment under the Proclamation the possibility occurred to me that section 3 might not properly apply to the general possession of chandu. Section 3 is divided into 3 sub-sections: the first deals with surrender within 14 days of the Proclamation's date of opium, chandu and the utensils therefore; the second refers to compensation payable for such surrender; and the third deals with the subsequent possession and the penalty therefor.

It seems a possible view — I make no ruling as the point does not arise here — that the possession referred to is possession of opium and chandu already in possession of the person charged prior to 14.2.46. The arrangement of the section and the heavy penalty seem to tend to support such a possibility.

However that may be, in this particular case the learned District Judge has in my view assessed a reasonable period for the cure of the addiction and has stated that as his reason for the sentence.

I therefore dismiss the appeal and confirm the finding and sentence.

Appeal dismissed.

S. KARTHIGASU v. PUBLIC PROSECUTOR.

[Appellate Criminal Jurisdiction (Willan, C.J., Malayan Union, Murray-Aynsley, C.J., Singapore and Pretheroe, J.,) August 21, 1946]

Criminal Procedure.— Misdirection — Failure of Judge to direct assessors on a point raised by counsel for the defence as to the possibility of conviction on a lesser charge — Whether such misdirection occasions a failure of justice — Criminal Procedure Code, Section 422.

In this case the appellant was convicted of murder under Section 302 of the Penal Code. The evidence showed that he with others, beat the deceased to death in October 1944 and that they all had the common intention of beating the deceased with sticks to obtain information from him. At the trial, counsel for the defence specifically raised the question that one of the possible verdicts was a conviction under Section 331 of the Penal Code, that is, causing grievous hurt with a view to extorting a confession or information. In spite of this specific submission, the learned trial Judge in his summing up directed the Assessors that there were only

four possible verdicts (a) murder (b) culpable homicide not amounting to murder (c) causing grievous hurt and (d) acquittal.

Held. (1) that since the evidence clearly showed that the beating which caused the death was inflicted with the object of obtaining a confession or information, and also since a possible verdict under Section 331 of the Penal Code was specifically raised by counsel for the defence, the learned Judge should have directed the Assessors on that point, and left it to them to decide whether the facts as proved amounted to the lesser offence under Section 331 of the Penal Code rather than the offence of murder;

(2) that his omission to do so amounted to a clear misdirection and that such misdirection occasioned a failure of justice; and

(3) that the Court had no option but to quash the conviction and sentence for murder and substitute a conviction under Section 331 of the Penal Code.

R. P. S. Rajasooria for the appellant.

C. M. Sheridan for the Public Prosecutor.

The judgment of the Court of Appeal was delivered by :—

Willan, C. J. :—In this case the appellant was convicted of murder under section 302 of the Penal Code (Cap. 45). The facts are that he with others not in custody, beat the deceased to death in October, 1944. We are satisfied that they all had the common intention of beating the deceased with sticks in order to obtain information from him. What information was required is not clear from the evidence, but in our view the evidence clearly points to the fact that the intention of the beating was to extract from the deceased information required by the Japanese.

At the trial, counsel for the defence specifically raised the question that one of the possible verdicts was a conviction under section 331 of the Penal Code i.e. causing grievous hurt with a view to extorting a confession or information. In spite of this specific submission, the learned trial Judge in his summing up directed the Assessors that there were only four possible verdicts: (a) murder, (b) culpable homicide not amounting to murder, (c) causing grievous hurt, and (d) acquittal. In our view, since the evidence clearly showed that the beating which caused the death was inflicted with the object of obtaining a confession or information, and also since a possible verdict under section 331 of the Penal Code was specifically raised by counsel for the defence, the learned trial Judge should have directed the Assessors on that point, and left it to them to decide whether the facts as proved amounted to the lesser offence under section 331 of the Penal Code rather than the offence of murder. He did not do so, and in our view this omission amounts to a clear misdirection. As a Court of Criminal Appeal we cannot say whether, if the Assessors had been properly directed on this particular point, they would have convicted the appellant under section 331 of the Penal Code or whether they would still have brought in a verdict of murder.

We considered carefully whether this misdirection is covered by section 422 of the Criminal Procedure Code i.e. that such misdirection did not occasion a failure of justice. We cannot say that it did not occasion a failure of justice, and accordingly we have no option except to quash the conviction and sentence for murder and substitute therefor a conviction under section 331 of the Penal Code, and sentence the appellant to ten years rigorous imprisonment, which is the maximum term of imprisonment under that section.

Order Accordingly.